IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
LETTERS PATENT APPEAL (ST.) NO.**10743 OF 2005**
IN
FIRST APPEAL NO.**2633 OF 1983**

1. Haji Sayyed Habib Sayyed
Nawabsaheb Peerzade and Ors. ***...Applicants***

Versus

Nisarali Hadayatali and Ors. ***...Respondents***

Mr. S.G. Deshmukh for appellants
Mr. M.D. Angal for respondent 1 & 2
Mrs. G.P. Mulekar, AGP for respondent 3

CORAM : SMT.RANJANA DESAI,
& SMT.V.K. TAHILRAMANI,JJ.
DATED : 28TH SEPTEMBER,2006

P.C. ***:-***

1. In this Letters Patent Appeal, the appellant has challenged the judgement and order dated 11/03/2005 delivered by learned Single Judge of this Court in First Appeal No.2663 of 1983. The said appeal was preferred under section 72(4) of the Bombay Public Trusts Act, 1950 (the said Act for short).

2. An objection to its maintainability is taken by Mr.Angal learned counsel appearing for the respondent on the basis of Section 100-A of the Code of Civil Procedure (CPC for short) as substituted by Code of Civil Procedure (Amendment) Act, 2002. It is contended that Section 100-A was brought into force on 1st July, 2002. As per this provision notwithstanding anything contained in any Letters Patent for any High Court or in any instrument having the force of law or in any other law for the time being in force where any appeal from an original or appellate decree or order is heard or decided by Single Judge of High Court, no further appeal shall lie from the judgement and decree of such Single Judge. It is contended that in view of this provision, the instant Letters Patent Appeal against the judgement and decree of the learned Single Judge dated 11/03/2005 is not maintainable. Our attention is drawn to the Full Bench decision of this Court in ***Rahul Sharad Awasthi V/s. Ratnakar Trimbak Pandit and Ors. 2004(3) ALL M.R.896***. Reliance is placed on the judgment of this Court in ***Bhenoy G. Dembla and Anr. V/s. M/s. Prem Kutir Pvt. Ltd. 2003(4) ALL M.R. 575***.

3. Mr.S.G.Deshmukh learned Counsel appearing for

the appellant on the other hand submitted that **Rahul Awasthi's case (Supra)** has no application to the present case because there the Full Bench was considering cases where the CPC is applicable. He submitted that the present appeal is not covered by section 100-A of the CPC. It is under a special statute. He pointed out that so far as appeal provided under special statutes are concerned, they fall outside the purview of section 100-A of the CPC and in fact, the Full Bench has in **Rahul Awasthi's case (Supra)** made it clear that it is not expressing any opinion on that question. Mr. Desmukh contended that even if First Appeal filed under the said Act is treated like a Second Appeal, as per clause-15 of the Letters Patent, even in case of Second Appeal, Letters Patent Appeal is not barred. It is available if Single Judge grants leave.

4. Mr. Deshmukh then drew our attention to Article-134A of Constitution of India which provides for certificate of appeal to the Supreme Court. He submitted that if this Court does not grant leave to appeal, party can approach the Supreme Court directly and obtain leave to appeal and Supreme Court can grant

leave and entertain an appeal. He submitted that similarly even a Letters Patent Appeal can be entertained by this Court, if it feels that any substantial question of law is involved by granting leave and in a given case the Single Judge can grant leave to file Letters Patent Appeal. Mr. Deshmukh placed reliance on the judgement of the Supreme Court in ***P.S. Sathappan (dead) by LRS V/s. Andhra Bank Ltd. and Ors. (2004) 11 Supreme Court Cases 672*** and contended that appeal can lie to the High Court from judgement of the Single Judge in exercise of appellate jurisdiction subject to leave being granted.

5. In **Rahul Awasthi's case (Supra)** Full Bench of this Court was considering whether section 100-A as substituted by section 4 of the Code of Civil Procedure (Amendment) Act 2002 shall have retrospective effect or is prospective in operation with effect from 1st July, 2002. After taking a resume of several judgements on the points, the Full Bench observed thus.

> *This Court held that*
>
> ***(i)*** *Section 100-A in the Civil Procedure Code, 1908 substituted by section-4 of the Code of Civil Procedure (Amendment)*

Act 22 of 2002 takes away the right of Letters Patent Appeal on and from 1st July, 2002 in respect of the suit filed before that date where the judgement or order of the Single Judge of the High Court in appeal against an original decree or order from such suit is rendered on or after 1st July,2002 i.e. the date on which the amendment to section 100-A is brought into force. No Letter Patent Appeal shall lie from the judgement, decree or order of a Single Judge in the First Appeal (or by whatever name called) given on or after coming into force of the new section 100-A i.e. 1st July, 2002

(ii) *The provision of Section 100-A in the Code of Civil Procedure, 1908 substituted by section 4 of the Code of Civil Procedure (Amendment) Act, 2002 shall not apply to the judgement and order rendered before 1st July, 2002 and the Letters Patent Appeal preferred against such judgement or order on or*

after 1st July,2002.

(iii) *In relation to the suit instituted prior to 1st July, 2002 and the judgement or order of the Single Judge of the High Court in appeal against on original decree or order rendered before 1st July, 2002, the pending Letters Patent Appeals as on 1st July, 2002 preferred against such judgement and order shall remain unaffected by section 4 of the Code of Civil Procedure (Amendment) Act, 2002.*

(iv) *Section 100-A as substituted by Code of Civil Procedure (Amendment) Act, 2002, has limited retrospectively as indicated in clause (i) above and to that extent vested right of the parties to the suit filed prior to 1st July, 2002 is extinguished. The fate of Letters Patent Appeals arising out of any appeal from an original decree or order heard and decided by a Single Judge prior to 1st July, 2002 remains unaffected by the new*

section 100-A of the Code.

6. However, the Full Bench made it clear that it was not concerned with the question whether Section 100-A of CPC as substituted by the Amendment Act 2002 is applicable to the appeal before Division Bench against the judgement and order of the Single Judge of the High Court in exercise of appellate jurisdiction under Special Statute and therefore, it was not expressing any opinion on that aspect.

7. We are therefore required to consider whether Letters Patent Appeal is maintainable against the judgement and order of the learned Single Judge in an appeal under section 72(4) of the said Act as this question is not covered by the Full Bench decision in **Rahul Awasthi's case (Supra)**. In this connection, we may usefully refer to yet another judgement of this Court in **Bhenoy G. Dembla's case (Supra)**. In that case, the appellants had moved an application before the Company Law Board under section 111 of the Companies Act, 1956. The Company Law Board held in favour of the appellants by its order dated 23rd February, 2001. In April 2001, an appeal was filed before the learned

Single Judge by the respondent therein under section 10-F of the Companies Act, 1956. The appeal was allowed by order dated 14/02/2003. The appellant therein preferred Letters Patent Appeal being aggrieved by the said order. Objection was raised on behalf of the respondent to the maintainability of the said appeal on the ground that amended provision of section 100-A was brought into force and therefore Letters Patent Appeal against the judgement delivered on 14/02/2003 by the learned Single Judge was clearly not maintainable. This Court referred to several judgements on the point. It particularly referred to the judgement of the Full Bench of Gujarat High Court in ***Nasik Hing Supplying Company V/s. Annapurna Gruh Udyog Bhandar (2003(2) Vol.44 Gujarat Law Reporter 926)*** where while considering the right of appeal which was expressly conferred under Special Law, the Full Bench of the Gujarat High Court held that the non-obstante clause with which Section 100-A begins is not in derogation of the express provisions of a special law conferring a substantive right of appeal against the decision of a single Judge of the High Court before a Division Bench of the same Court. After referring to the Full Bench of the Gujarat High Court, this Court noted the principle

of law in following manner :-

> *The Principle of law which emerges is that unless a special statute expressly confers and recognizes a right of appeal before the Division Bench against the judgment and order of a single Judge of the High Court in the exercise of the appellate jurisdiction, no such appeal would lie upon the enforcement of the amended provisions of Section 100-A against a judgement of the Single Judge rendered on and from 1st July, 2002.*

8. On the facts before it this Court observed that the Companies Act 1956, confers a right of appeal to the High Court under section 10-F against a decision rendered by Company Law Board. There is no express conferment of right of a further appeal to the Division Bench against the decision of a Single Judge and that being the position an appeal to the Division Bench is clearly not maintainable against the decision of the Single Judge rendered after 1-7-2002.

9. In our opinion, the above conclusion drawn by

this Court in **Bhenoy G. Dembla's case (Supra)** is clearly applicable to the present case. In this case also we are concerned with an appeal filed under the Special Statute. The said Act does not provide for a right of appeal before the Division Bench and therefore, in our opinion, Letters Patent Appeal against the impugned judgment and order of the learned Single Judge is clearly not maintainable.

10. We may also at this stage refer to yet another Full Bench decision of this Court ***2001(3) Mh.L.J.6 Gangwani and Co. V/s. Mrs. Saraswati***. We are not really concerned with the question which the Full Bench was dealing with in that case. We may however refer to paragraph-33 of the judgement where the Full Bench has held that a decision rendered by Single Judge under section 30 of the Workmen's Compensation Act, will have same effect as that of a decision rendered by the Single Judge in a Second Appeal and in view of section 100-A of the CPC, Letters Patent Appeal against such decision of the Single Judge will not be maintainable.

11. In ***Shivprasad V/s. Leelabai Badrinayaran (1998 (1) Mh.L.J. 444*** this Court was dealing with Section 72

of the said Act. This Court held that appeal filed under section 72(4) of the said Act is a 'Second Appeal' to the High Court and is subject to the restrictions and limitations imposed on a “Second Appeal” as prescribed under section 100 of the CPC. If an appeal filed under section 72(4) of the said Act is also in the nature of a 'Second Appeal' and is subject to the restrictions and limitations imposed on a 'Second Appeal' as prescribed under section 100 of the CPC, we can certainly draw support from the observations of Full Bench in **Gangwani's case (Supra)** and hold that Letters Patent Appeal against the decision of the Single Judge rendered in the said appeal will not be maintainable. In our opinion, reliance placed by Mr. Deshmukh on **P.S. Sathappan case (Supra)** is totally misplaced because in that case the Supreme Court was concerned with the effect of the provisions of section 104(2) of the CPC vis-a-vis clause-15 of the Letters Patent applicable to the Madras High Court.

12. In this connection, we may refer to the judgement of the Supreme Court in **Municipal Corporation of Brihanmumbai and Anr. V/s. State Bank of India**

(1999) 1 SCC 123. In that case, the Supreme Court was dealing with a case where the Division Bench of this Court had dismissed the Letters Patent Appeal preferred against the judgement and order of the learned Single Judge of this Court in an appeal under section 218-D of the Bombay Municipal Corporation Act, 1888 from the appellate order of the Chief Judge of the Small Cause Court passed under section 217(1) of the same Act. The Supreme Court held that no further appeal is provided against an appellate order of the Chief Judge of the Small Cause Court under section 217(1) thereof. It was further observed that section 100-A of the CPC was introduced by the Amendment Act, 1976 to minimise delay in the finality of a decision and it specifically bars any further appeal in such cases. The Supreme Court clarified that prior to the enactment of this provision, under the letters patent, an appeal against the decision of a Single Judge in a Second Appeal in certain cases was held competent but the right of taking recourse to such an appeal has been taken away by section 100-A of the CPC. The Letters Patent Appeal was thus held not maintainable. These observations of the Supreme Court provide an answer to Mr. Deshmukh's contention that a Letters Patent Appeal would lie

against a judgement and order of the Single Judge in a Second Appeal.

13. In view of the above, we hold that the present Letters Patent Appeal is not maintainable and is dismissed as such.

(RANJANA DESAI,J.)

(V.K.TAHILRAMANI,J.)

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